

## DELTA PROTECTION COMMISSION

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## DRAFT MINUTES

## DELTA PROTECTION COMMISSION

6:30 p.m. on Thursday, May 22, 1997

Jean Harvie Community Center  
14273 River Road, Walnut Grove

1. Call to Order/Attendance. The meeting was called to order by Vice Chair Steve Mello at 6:45 p.m. Commissioners present included: Calone, Canciamilla, Curry, Ferreira, Harris, McGowan, Vice Chair Mello, Nottoli, Salmon, Sanders, Thomson, and Yates; Commissioner Cabaldon arrived at 7:00 p.m. Commissioners absent included: Broddrick, Chairman McCarty, Murphy, Potter, Rhodes, and Simas.
2. Public Comments. There were no public comments.
3. Minutes of the March 27, 1997 Meeting. On a motion by Commissioner Nottoli and a second by Commissioner Harris, the draft minutes were approved as submitted.
4. Chairman's Report. Vice Chair Mello reported the next meeting will be Thursday, July 24, 1997; and welcomed new Commissioner Dwight Sanders from the State Lands Commission, replacing Commissioner Sekelsky. He noted changes to the agenda including rescheduling the briefing on the 120 Day FEAT Report. A Recreation Users Oversight Subcommittee meeting is scheduled for Friday, June 6, 1997 at 3 p.m. Assembly Member Tom Torlakson has been designated to serve as the ex-officio member of the Delta Protection Commission representing the Assembly. A resolution of appreciation for Heather Fargo was approved on a motion by Commissioner Curry and second by Commissioner Salmon.
5. Attorney General's Report. Dan Siegel, Deputy Attorney General, reported that BioGro had **not** filed a lawsuit over the Commission's newly adopted regulation, and has agreed to withdraw the pending federal lawsuit regarding the commerce clause.

Mr. Siegel noted that the Bunch lawsuit had been decided, and on May 8, 1997, the State Supreme Court unanimously supported the "reasonableness" rule that the Delta Protection Commission had supported in its amicus brief.

6. Executive Director's Report. Margit Aramburu reviewed the handouts at tonight's meeting and noted she had included in the packet a one page memo about selenium in the Delta. She noted several meetings she had attended and announced that the issue of ash on ag lands has been referred to Department of Food and Agriculture; letters regarding the Commission's sludge regulation had been mailed; reported on high water issues, including a letter to be sent to Colonel Klasse, and participation in the FEAT Work Shop held in Walnut Grove. She noted that a full time intern has been hired, Walter Knornichuk, who will be graduating from Berkeley shortly.

Commissioner Curry asked that the Commission be alerted to new or expanded marina projects on the pending projects list.

7. Pending Projects Memo. There were no comments.

9. Briefing on Northern Pike, a Non-Native Fish. Banky Curtis, Manager of Department of Fish and Game Region II, announced that Ryan Broddrick had been appointed Chief Deputy Director of the Department of Fish and Game by the Governor. He briefed the Commission on the Northern Pike now found in Lake Davis and discussed possible impacts if the Northern Pike becomes established in the Delta. He noted that the Northern Pike would adapt very well in Delta waters and could feed on and decimate native and nativized populations of fish, including the rare and endangered species now in the Delta. He reviewed the actions currently being studied by the Department and the recent court actions which slowed the process of preparing for treatment of Lake Davis. The Department has determined that the Northern Pike does indeed constitute a threat to the environment, the Department believes the Pike cannot be contained in Lake Davis; the Department has coordinated with the Department of Public Health to protect the community that uses Lake Davis as a water supply if Lake Davis is treated; the Department has determined there is no feasible alternative (drain the lake, intense fishing, importation of a Pike virus, etc. He mentioned a recent

bill by Senator Leslie which would stop the Department from treating the waters of Lake Davis to eradicate the Northern Pike.

Commissioner Harris noted his experiences in the Sierras and an eradication program in Sardine Lake about 15 years ago; after several years, the trout fishery did recover. He said he is personally concerned and will write a letter of support for DFG.

Commissioner Curry brought up issues of local fiscal impacts, and suggested alternatives to the proposed rotenone program; Mr. Curtis said the Department will be carrying out a "fish out" to encourage removal of the Northern Pike from Lake Davis. Commissioner Curry asked what will happen if the Lake Davis program does not go forward; Mr. Curtis said there is no viable alternative.

10. Briefing on Submittal from the City of Stockton Regarding Conformance with Land Use and Resource Management Plan for the Primary Zone of the Delta Amendment Regarding Utilities and Infrastructure P-3.

Ms Aramburu informed the Commission that the City of Stockton had submitted a letter regarding conformance with the recently adopted regulation (Utilities and Infrastructure P-3). The City's letter states that the City's recent General plan amendment ensures conformance with the Commission's regulation and that no further action is required by the City. Ms Aramburu said she had coordinated with the Attorney General's office, and staff believes this letter is adequate for compliance with the Act. She said the Commission has two options: allow staff to send a letter to the City stating no further action is required or to consider the matter further at a public hearing at the next Commission meeting.

Commissioner Harris proposed a motion to accept the City's letter. Ms Aramburu noted that no motion would be required to accept the City's letter, only to set a public hearing for further consideration. There was no further discussion.

11. Public Hearing on Draft Inventory of Recreational Facilities. Ms Aramburu reviewed the history of the inventory of recreational facilities prepared by staff. She noted that the Department of Parks and Recreation will be presenting the

findings of the recreation user survey at the next meeting. She said the inventory was prepared by staff, starting with an inventory of marinas prepared by Department of Boating and Waterways, and using all available sources. She noted that all the sites had been visited except the hunting and duck clubs. She said the draft inventory has been reviewed by City and County Planning and Recreation Departments, the Citizen's Advisory Committee and the Recreation Users Oversight Subcommittee. She noted an additional change received from Gil Labrie. She said the purpose of the public hearing is to allow the public and the Commission to review and comment on the material and its presentation. The information would be made available to local governments, special districts, developers, state agencies and others that are considering development of new recreational facilities in the Delta. Ms Aramburu noted that the maps in the second half of the report will be modified to include the site numbers.

Commissioner Salmon suggested the information about pumpout facilities be added to the list of improvements at the marinas; Ms Aramburu agreed to add that information to the inventory.

Commissioner Curry noted there are 100% grants available to fund installation of new pumpout facilities where those facilities are needed. He offered to help anyone that wants more information about the program.

Commissioner Harris said he would give a copy to the Rio Vista Chamber of Commerce for its use. He suggested adding the telephone numbers of the marinas; Ms Aramburu said the inventory is not intended to serve as a guide or compete with the commercially available guides of the Delta. She offered to make the information available to those that prepare guidebooks, and added the inventory was conceived as a planning tool for agencies.

Commissioner Sanders suggested adding a list of guidebooks to the inventory; Ms Aramburu agreed to prepare and add such a list.

Commissioner McGowan said the information should be available to the general public.

Commissioner Nottoli thanked the staff and reviewers for the work on the inventory and survey, and commented that regarding distribution, the inventory should be sent to local libraries and Chambers of Commerce, and made available on the Internet.

Commissioner Ferreira suggested including the telephone numbers on the Internet listing.

Commissioner Harris asked if the report is on the home page; Ms Aramburu said not yet, but the Commission does have a home page at [www.delta.ca.gov](http://www.delta.ca.gov).

Commissioner Sanders suggested that if the information is available on disk it can be added to any web site, including the State Lands Commission home page.

Vice Chair Mello opened the public hearing; there were no comments. He closed the public hearing. He noted that written comments could be submitted until the end of June.

He summarized directions to staff: add a list of pumpout stations and add a list of private guides with more specific information. Ms Aramburu added: wider distribution of the final document (libraries and Chambers of Commerce, and the Internet).

## 12. Briefing on Recent CALFED Documents: Ecosystem Restoration Program Plan and Environmental Impact Memo.

Ms Aramburu reviewed the two memos which had been distributed, one summarizing the Ecosystem Restoration Program Plan (ERPP), and on the environmental document.

CALFED held a work shop on the environmental document for the CALFED process and the memo describes the three phases of the program, the level of detail to be included and summaries of the proposed assessment methods to be used for the various topics to be addressed including: hydrology and water management; vegetation and wildlife; fisheries and aquatic ecosystems; levee system integrity; economics and lands use; water quality; air quality; noise; visual resources; cultural resources; public health and environmental hazards; recreation resources; geomorphology and soils; traffic and navigation; utilities and public services and social well-being.

Commissioner Yates suggested that the Commissioners carefully review the environmental document, and note the acres of prime agricultural land proposed for retirement.

Vice Chair Mello agreed.

Ms Aramburu said staff has requested that the environmental document fully evaluate all proposed land use changes in the Delta.

Ms Aramburu reviewed the Executive Summary of the ERPP, including the staff memo, the map of the four subareas, and a copy of Table 2. She noted that the acreages appear to overlap, for example the goal to incorporate 10% of the leveed lands into the active floodplain could also be used to meet acreage goals for tidal perennial habitat, fresh emergent wetland habitat, and riparian habitat. She noted that the draft chapter describing the Delta portion of the program focuses on areas already under consideration for restoration, such as Little Holland, Liberty and Prospect Islands in the Yolo Bypass; the east bank of the South Fork of the Mokelumne; and Twitchell and Sherman Islands in the western Delta which are largely owned by Department of Water Resources.

Commissioner Yates noted that solutions to flooding can protect agricultural production, but the approach to flooding is often retirement of agricultural lands and creation of habitat. He said problems have recently been reported concerning the over population of waterfowl on some areas of the tundra; the article had emphasized the value of agriculture to the health of the waterfowl. He said he is very concerned about the large number of acres of agricultural land slated for retirement. He said there must be protections for farmers that also want to create habitat, or whose neighbors create habitat.

Vice Chair Mello said the proposals will have more impacts than the Fish and Wildlife Stone Lakes Refuge which the local community fought. He is surprised by the lack of interest or concern from the local community and the agricultural support industries. He said the report needs scrutiny and thorough review.

Commissioner Yates said the report contains a lot of excellent proposals; there are opportunities for habitat enhancement and restoration, and some lands may appropriately be retired, but there needs to be balance where all needs are met. He said its the responsibility of the public to ensure that there is balance in the final document.

Ms Aramburu said the final ERPP will include linkage between problems of the past and how the proposals will resolve those problems. She noted there will be indicator species to help evaluate the success of the program. The Plan uses goals from different eras; she said staff has asked for information on the source of the problems. She said she is concerned that exotic species may have created many of the problems; problems that cannot be overcome. She said some of the numbers are from 1906; when much, but not all of the Delta had been reclaimed. She said it will be important to review the overall ERPP when released; and said that upon release there will be a Subcommittee meeting to discuss the ERPP in more detail. She said there will be full notice of the Subcommittee meeting when it is scheduled.

Vice Chair Mello urged the farmers and local government people to participate in the Subcommittee.

Commissioner Calone asked when the ERPP is scheduled to be completed; Ms Aramburu said June. Commissioner Calone said his biggest concern is the loss of agricultural land and noted that the Commission's Plan speaks to protection of agricultural land. He said there is a lot of habitat being managed by private landowners that can be enhanced with assistance from CALFED, which would be preferably to destruction of thousands of acres of agricultural lands. He said there are lots of smaller islands that are not used for agriculture which would be suitable for habitat enhancement. He said he is concerned about long-term protection of agricultural land.

Commissioner Salmon said he is concerned about the complacency of the average farmer in the Delta. He said its important to get more people involved and help them understand what is proposed.

Commissioner Nottoli asked how much agriculture is involved in the CALFED process; Vice Chair Mello said the State Farm

Bureau is involved. Commissioner Yates added that Chairman McCarty, David Guy from the State Farm Bureau, and Alex Hildebrand sit on the BDAC, plus others. Vice Chair Mello said the State Farm Bureau is representing agriculture in the Valley, as well as the Delta. Commissioner Nottoli asked if local agricultural interests are involved, and noted that the Delta Protection Commission could help disseminate information about the CALFED proposals to local interests and perhaps hold public hearings to allow discussion and debate. He suggested the Commission has a responsibility to help in this way.

Vice Chair Mello said he has been waiting for others in the local community to generate interest in the process. He feels its almost too late, but agrees that the Delta Protection Commission can help to disseminate information to the Delta community.

Commissioner Nottoli said there is a lot of public interest at stake, but there are also property rights involved, and the protection of agricultural production in the Delta is also an important issue. He noted that there was no plan before, but now there is beginning to be information that people can review and react to.

Ms Aramburu noted the three Delta Water agencies are involved with the CALFED process, and said she mails to the staffs of the five Delta counties to keep the staffs up to date. She agreed that as more specific information is released people will become more involved.

Commissioner Harris expressed concern about the ERPP program and said there could be an adverse impact to the agricultural economy in the Rio Vista area.

Commissioner Yates said he gets all the material and noted that there are overwhelming amounts of paper being generated.

Commissioner Calone said some of the proposals seem absurd, and perhaps its a plan to make a peripheral canal look appealing.

Vice Chair Mello said he had similar concerns, but noted the Commission's Plan supports keeping water in the Delta waterways.



8. Report from the Budget, Finance, and Administration Subcommittee.

Ms Aramburu made a report on behalf of the Subcommittee that met Wednesday, April 30 to review the draft work plan and budget and the proposed Teale contract; with some changes the Subcommittee recommended approval of both.

She said a separate matter was raised, a serious and grave concern about whether the In-Channel Island study should take place on Department of Fish and Game-owned lands, since the Department could pay for projects on its land if it so desired. She said she had been unprepared to fully respond, but she had received direction from the Subcommittee not to do that. She said she wanted to present a report to the full Commission about how the sites were suggested.

She said San Francisco Estuary Project's Delta In-Channel Island work group has been working for some time to develop a demonstration project, using "soft" techniques to protect the in-channel islands. She said the resource management agencies have said they do not want riprap to be placed on the in-channel islands. The projects carried out to date on Staten Island have used riprap and have been very successful. She said the resource management agencies now say riprap does not promote the appropriate land-water interface for aquatic breeding and rearing habitat. She said no other techniques have been evaluated in the Delta, for example brush boxes, coco fiber mats, etc. Because it is so hard for a landowner, reclamation districts or non-profits to get a permit to do habitat enhancement projects, the in-channel island group is trying to provide leadership and get agreement on techniques for two key reasons: to protect and enhance the in-channel island habitat and to protect the Delta levees from erosion.

She said the demonstration sites were selected by a committee of the people which will also give the permits: the Corps, Department of Fish and Game, and others with interest and experience in the area of restoration including State Lands Commission, and the Department of Water Resources. The purpose of the site selection was to pick sites where permits could be obtained quickly; ownership was reviewed in light of sites where the owners would allow projects to proceed.

The Delta Work Group Site Selection Subcommittee recommended Webb Tract Islands, which are owned by Department of Fish and Game although the island is owned privately; and Little Tinsley, an unleveed island, which is neither a reclamation district nor agriculture and is owned by Noble Yacht Club. On Little Tinsley there is a long stretch of shoreline where several alternative treatments can be lined up and compared as to ease of installation, cost, and effectiveness, and at Webb Tract there was a variety of islands so a shoal, an island with emergent vegetation and an island with shrub scrub vegetation could be selected within one geographical area. The owner of Webb Tract is very supportive of the project because the project will help protect the levees on Webb Tract.

Ms Aramburu noted that the Commission's funds must be expended before the end of the fiscal year as per directions from the Department of Conservation. She said there is only about another month to expend the funds, and it is not feasible to reassemble the Site Selection Subcommittee to select other sites. Her recommendation to the Commission was to go ahead in with both public and private sites; or stick just with the Little Tinsley site and not expend all the contracted funds. She noted that she had not considered ownership as an issue; the main criteria was approvability.

Vice Chair Mello asked for comments from the Budget Committee. He said it made sense to proceed with the selected sites in light of the time constraints on expended funds and the fact that the selected islands would help protect the levees on Webb Tract.

Commissioner Calone said he had raised the issue because there are private landowners trying to protect the channel islands with their own resources and assistance should be provided to those landowners. He said the Commission is in difficult situation because of the time constraints. He said he has not seen a map of the site and has not seen how the selected channel islands will protect the levees on Webb Tract. He said the Subcommittee had taken the position that Delta Protection Commission money should be spent to help the individuals that are trying to protect the levees; if the islands are going to protect Webb Tract from waves across Franks Tract he could support it.

Vice Chair Mello asked Ms Aramburu to describe the location of the selected islands; she used a map to describe the location of the three selected islands. She described the selection criteria developed and used by the Site Selection Subcommittee and noted that protection of levees was one of the selection criteria. She noted that Webb Tract is part of the Delta Wetlands project currently proposed for development as two reservoirs and two managed wetlands.

Commissioner Ferreira said he was concerned that the money must be spent or returned to the agencies; he objects to spending money just because the Commission has it.

Vice Chair Mello noted that there will be a certain amount of habitat restoration funded in the Delta through the CALFED process and the Commission can provide leadership in directing habitat restoration on non-agricultural lands and thus protect agricultural lands and provide enhanced habitat.

Ms Aramburu stated that SB 34 monies will be designated as part of the overall funding of the proposed Delta In-Channel Islands project, which could be deemed matching funds from Department of Fish and Game.

Commissioner Sanders said it is not unusual for public agencies to expend monies for other public agencies' lands. He said the success of this program could lead to more money being made available to the private landowners; the public agencies are taking the risks with this project which will benefit the private landowners. In addition, he agreed with Commissioner Ferreira about spending funds, but said these projects are not wasteful and, if successful, will benefit the entire Delta.

Commissioner Ferreira said any title issues should be clarified for the project sites. Vice Chair Mello asked if there are title issues; Ms Aramburu said not to her knowledge.

Commissioner Salmon said he concurred with all the remarks made, and hoped in the future unexpended monies will be able to be allocated toward paying off the ELPF debt. He said its a one time situation and should go forward.

Vice Chair Mello said based on the discussion, he would direct staff to proceed with the project and no further action is required of the Commission.

Ms Aramburu suggested moving to Agenda Item No. 15 then allowing further discussion of Agenda Item No. 8 if the Commission so desires.

15. Disposition of Unallocated Funds from FY 96-97 Budget.

Ms Aramburu said there will be approximately \$40,000 unallocated. At the end of FY 96-97 the Commission asked that unallocated funds be used to pay off the ELPF loan; Department of Finance (DOF) said no, because the request was submitted too late and because it was not clear if funds from one special fund could be transferred into another special fund. DOF suggested that the legal issues be researched further and that expenditures be reallocated to leave as much money as possible in the ELPF account and credit those funds toward repayment of the ELPF loan.

Staff has worked with Department of Conservation to reallocate expenditures from the various funds to leave as much money as possible in the ELPF account; that will take affect in FY 97-98.

She noted that the Budget Subcommittee had recommended that staff develop ways to spend unallocated funds if they cannot be credited to the ELPF loan and she reviewed the options outlined in the staff report.

Dan Siegel, Deputy Attorney General, said he does not see a prohibition in using surplus funds from one special fund to pay off the loan from the ELPF. His conclusion is based on a review of the statutes that created the funds and the budget language. He also talked to DOF staff and they concurred with his findings. He said its a policy decision, not a legal matter.

Commissioner Calone asked if there is a surplus this fiscal year it can be applied to repayment of the ELPF loan; Mr. Siegel said yes.

Vice Chair Mello asked how much money would be unexpended; Ms Aramburu said \$40,000. He asked the cost of the In-Channel

Island study; she said those funds were already allocated. She noted that staff would do everything they could to ensure the Commission's desires are met, but suggested that if there are any "fall back" suggestions to make sure that staff is aware of them.

Commissioner Nottoli asked if staff had considered any truly useful and utilitarian projects as alternative spending projects.

Vice Chair Mello said he is supportive of additional sediment testing.

Ms Aramburu said the limitation is the short time frame; it would not be feasible to develop guidelines or programs to select new projects in this very short time frame.

Commissioner Ferreira asked the cost of the testing projects; Ms Aramburu said the fish toxics study would cost \$40,000 and the sediment testing study would be about the same.

Commissioner Sanders encouraged the Commission to allocate some funds to the debt, and perhaps designate some funds to a project.

Commissioner McGowan asked if the Commission had already taken a position on the repayment issue; Ms Aramburu said the Budget Subcommittee's position has always been that surplus funds should be allocated to repayment of the ELPF debt and the Commission has also taken that position in the past.

On a motion by Commissioner Yates and a second by Commissioner Thomson, the Commission approved by voice vote to direct any surplus funds at the end of FY 96-97 toward repayment of the ELPF loan.

Commissioner Calone asked if the Channel Islands project would go forward; Vice Chair Mello said yes.

Commissioner Salmon said he has been on the Budget Subcommittee since the beginning and said the Subcommittee fully supported the concept of the Commission repaying the original loan.

Commissioner Nottoli asked how much has been repaid to the debt; Ms Aramburu said \$50,000 was credited at the end of FY 94-95; \$80,000 at the end of FY 95-96 was unallocated but could not be credited, and the \$15,000 from the fine program.

14. Public Hearing and Possible Adoption of Proposed Budget and Work Plan for FY 97-98.

16. Public Hearing and Possible Approval of Contract with Teale Data Center for FY 97-98.

Ms Aramburu reviewed the staff report on the proposed Teale contract and introduced Roger Ewers from Teale.

There was a motion by Commissioner Cabaldon and a second by Commissioner Sanders to approve the proposed contract with Teale (Agenda Item No. 16).

Commissioner Curry asked what would happen to the Commission's GIS if the Commission sunsets; Ms Aramburu said the Commission's would find another agency to take over the GIS, such as Department of Water Resources' Central District office or State Lands Commission.

Ms Aramburu noted that the proposed budget and work plan are very similar to that of last year and that the Commission will have an environmental intern for eight months of the fiscal year.

Vice Chair Mello, noting only Roger Ewers from Teale in the audience, formally opened and then closed the public hearing on the proposed budget and work plan and the contract with Teale Data Center.

The motion to approve the proposed budget and work plan (Item No. 14) was approved unanimously by voice vote.

On a motion by Commissioner Cabaldon and a second by Commissioner Sanders, the motion to approve the proposed contract with Teale Data Center (Agenda Item No. 16) was approved unanimously by voice vote.

17. Commissioner Comments and Announcements.

Vice Chair Mello announced RD 563 received about 75% of the FEMA reimbursements from the 1995 floods and has a pending 96,000 cubic yard dredging application. The results of the sediments testing have been received and show the sediments are cleaner than hoped. Only two constituents were found and they were below the levels required by the Central Valley Regional Water Quality Control Board. If the project is approved it will be the first dredging project in the Delta in quite some time.

Commissioner Curry noted \$103,000 of the Commission's budget is coming from the Boating and Waterways special funds and said he is proud the Department is actively supporting the Delta Protection Commission's program.

Vice Chair Mello noted that Department of Boating and Waterways' study of erosion of Delta levees is underway using levees along Georgiana Slough.

18. Adjourn. The meeting was adjourned at 9:25 p.m.